THE ARAB REPUBLIC OF YEMEN AND THE PEOPLE'S REPUBLIC OF SOUTHERN YEMEN

Arab Republic of Yemen--History and Development

The Arab Republic of Yemen lies at the southwest corner of the Arabian Peninsula and is comprised of two well-defined areas--the highlands, located inland, and the coastal strip, along the Red Sea. In classical times the Yemen formed part of the southeastern area of Arabia Felix. One of the best known kingdoms in that region was that of Sheba, which lasted from 950 to 115 B.C. From then until the Sixth Century A.D., Arabia Felix was ruled by the Himyarite dynasty, from whom the modern Imams[1/] claim descent. During the Seventh Century the country accepted Islam, and the Sunnis of the Shafi'i rite established their power in the Tihama (the coastal region), while the Zaidis, a branch of the Shi'ah, held the highlands. During the Ninth Century the Zaidi Imam Yahya al-Hadi ila al-Ḥaqq founded the Rassid dynasty of the Yemen, which has survived, with some interruptions, to the present time.

Between 1962-1970 the Yemen passed through a vicious civil war which resulted from the death of the Imam in September 1962 and the revolt

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1/ "The Imam is the chief or leader of the Muslim community as the spiritual and secular head of the nation in his quality of successor to the Prophet Muhammad. The Imam is chosen or elected by the Muslim community. The qualities required are unblemished character, knowledge of law, the necessary inwight and ability to judge. The Shi'ah further demand that the Imam should belong to the family of the Prophet and thus the choice is limited to the descendants of 'Ali and Fatima." [For further details, see The Encyclopaedia of Islam, Vol. II, pp. 473-474].

by an army colonel, which was supported by troops from the U.A.R. The Republican forces gained control of most of the country, and the Republic was soon recognized by the United States and the U.S.S.R., being admitted to the United Nations early in 1963. By the summer of 1969 the resistance of the Royalist camp had collapsed and its followers accepted the Republican regime in San'a, the capital.

The coup d'etat of September 26, 1962, ousted the last installed Imam and ended the one-thousand-year-old Zaidi theocracy. The revolution shifted administration and justice from the hands of the descendants of the Prophet Muhammad (Oligarchs) into a political system similar to those in the other Arab states. "Although Shari'a justice continued to function within the new governmental structure, laws were now passed by 'Republican decree', and administration began to function along more modern lines."[2/]

The new Republic promulgated its first modern Constitution on December 30, 1970. The introductory part and the preamble to this Constitution (copy attached) indicates that the Republic of Yemen is a state based on Muslim religion and the teaching of Islam. Articles 1-3 of the Constitution leave no doubt in one's mind that the whole idea of law and order in the Yemen society is founded on the principles of Islamic law, especially the wording of Article 3.

2/ Albert P. Blaustein and Gisbert H. Flanz (eds.), Constitutions of the Countries of the World: Yemen Arab Republic, chronology, p. 3.

> Article 1: Yemen is an Arab Islamic state, independent and enjoying complete sovereignty. It is a consultative, parliamentary republic, and the people of Yemen are a part of the Arab nation.
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> Article 2: Islam is the religion of the State, and Arabic is its official language.
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> Article 3: The Islamic Shari'ah is the source of all laws.3/

The word "Shari'ah" here means the Islamic way of life of a Muslim, who must follow its precepts in his daily life. To a Muslim, Shari'ah means the totality of Allāh's (God's) Commandments relating to the activities of man. It comprises, without restriction, as an infallible doctrine of duties, the whole of the religious, political, social, domestic and private life of those who profess Islam. The prescriptions of the Shari'ah may be classed in two main groups according to their subject: (1) 'ibādāt (regulations relating to worship and ritual duties); and (2) mu'amalāt (regulations of a judicial and political nature, including civil and criminal matters).4/

Chapter IV of the Constitution provides for the organization of the judiciary. Article 146 further emphasizes the religious law, as follows:

> Article 146: No one shall occupy a judicial post except scholars in the Shari'ah Law, of sound character and behavior.

3/ Ibid., pp. 3-4.

4/ For more details on the Shari'ah, see Shorter Encyclopaedia of Islam, pp. 524-529.

The consultation of all available sources, including a telephone conversation with the Chargé d'Affaire of the Arab Republic of Yemen, confirms our findings that family law, which is based on the principles of Muslim religious law, has survived and is still applied in the Arab Republic of Yemen, despite the political changes in the system of government.[5/] The judicial system is comprised of religious and secular courts.

People's Republic of Southern Yemen--History and Development

The territory occupying the southernmost portion of the Arabian Peninsula includes two areas: the Colony of Aden, small and highly centralized; and the Aden Protectorate, stretching along the Indian Ocean, which is widely spread and subject to a diversity of tribal systems.

The history of the Colony and the Protectorate goes back to the beginning of the last century. In 1837 a British ship, wrecked in neighboring waters, was attacked by local inhabitants. The attack was followed by the dispatching of British forces from Bombay to the scene after the breakdown of negotiations with the Arab rulers. The British force captured Aden on January 19, 1839. The treaty signed the following

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5/ "There is a dearth of reference material on the Yemeni legal system. Although the revolution of September 26, 1962, drastically altered many aspects of the national society, jurisprudence has remained rooted in the traditionalist Muslim Shari'a. Accordingly, the most practical approach to understanding Yemeni law is through reference to standard works on Islamic institutions and legal procedures." [Blaustein and Flanz, op. cit., bibliography, p. 1].

June, granting the Ruler a stipend of six thousand dollars a year, was the forerunner of a long series of treaties with some 30 local chiefs, which gradually extended British rule throughout the area. These treaties, which have been described as the cornerstone of the Protectorate system, were substantially similar in form. They accord the "favor and protection" of the British Government to the Rulers who agreed not to have relations with foreign powers.

From the beginning, the Colony had a normal form of British Colonial Administration, with a Governor, an Executive Council and a Legislative Council. In the Protectorate it was never attempted to introduce direct British Administration. The Protectorate consisted of a number of autonomous Arab states bound to the British Government only by these treaties of protection. The Protectorate was ruled by systems of tribal administration. The inhabitants were, and still remain, attached to traditional tribal ways of life, living and working as members of family groups which together form tribal units. With the exception of the Colony of Aden, Islam is the only religion practiced by the inhabitants, as the majority are devout Muslims.

The modern political history of South Arabia hardly dates back more than a quarter of a century. On February 11, 1959, six western protectorate states: the Amirates of Baiḥan and Dhala; the Sultanates of 'Audhali, Fadhli and Lower Yafa'; and the Upper 'Aulaqi Sheikhdom formed the "Federation of the Arab Amirates of the South." The Sultan

of Lahej joined the Federation in October 1959; the Lower 'Aulaqi Sultanate and Dathina State in February 1960; the State (formerly Colony) of Aden on January 18, 1963; the Wahidi Sultanate (formerly in the Eastern Aden Protectorate), the Haushabi Sultanate, and the Sheikhdom of Sha'ib in March 1963; the Upper 'Aulaqi Sultanate and the Moflahi Sheikhdom in February 1965; and the 'Alawi Sheikhdom in March 1965. On April 4, 1962, the Federation, at that time composed of only 14 states, changed its name to "The Federation of South Arabia."

Political agitation and disturbances against the British administration in the Colony of Aden and against the rulers of the Federation became serious in the mid-1960's. Opposing political organizations infiltrated the Administration of the Federation, including the Federal Army, and between August and October of 1967 fighting broke out between the Federation and the opposition, resulting in the overrun of the Federation of South Arabia by the forces of the National Liberation Front (NLF). The rulers of the Federation were basically, as previously mentioned, tribal chieftans who had assumed a variety of ruling titles for themselves, depending on the importance of the area they ruled.

At the same time, a rival political organization, the Front for the Liberation of Occupied South Yemen (FLOSY), with the support of the U.A.R., fought a civil war against the NLF and harassed the British forces in Aden. In November 1967, the U.A.R. withdrew its support from FLOSY, and with the backing of the armed forces the NLF took over throughout the country. On November 30, 1967, the "Southern Yemen People's

Republic" was proclaimed. The name of the Republic subseqnently changed to the "People's Democratic Republic of Yemen."

The Republic was actually formed from the former British Colony and Protectorate of Aden, together with the Islands of Perim and Kamaron. The Island of Socotra also chose to join the new State. The Juria Muria group of islands had been returned to Muscat by Her Majesty's Government, but the government of the new Republic revoked this decision. The Republic is divided into six governorates which replace the twenty-three sheikhdoms and sultanates of the Protectorate. The Republic lies at the southern end of the Arabian Peninsula, with Perim Island a few miles due west, in the strait marking the southern extremity of the Red Sea; Kamaron Island some 200 miles north of Perim; Socotra and the Kuria Muria groups in the extreme east, the former at the entrance to the Gulf of Aden, the latter near the coast of Oman. The Republic has frontiers with Yemen, Saudi Arabia, and Oman, but none of these frontiers is fully delimited.

Until a new Constitution is drawn up, existing ordinances and regulations remain in force, with presidential authority replacing the powers of the British and Federal Governments. The National Liberation Front General Command, which has 41 members, forms the interim legislative authority.

In discussing the legal and judicial systems of Southern Yemen, one must remember to distinguish between the conditions in the Colony of Aden, which was under direct British administration, and that of the Protectorate, which was solely under the Arab rulers' administration and

followed a system based on Shari'ah customary and tribal law. It was not until the Federation was formed that a uniform modern type of legislation began to appear in South Arabia, filling the gaps in the existing system.

It was, and still is, in the hinterland of the Aden Protectorate that Shari'ah law found its widest application among the inhabitants. It is also there, in certain localities, that it holds almost undisputed sway. Yet it was only a few years before the Federation was formed that Shari'ah Courts were established in any organized form, as a result of British encouragement. Prior to this the only authority within each tribe was its sheihk or some local ruler who applied the law.

The impact of Shari'ah law was felt chiefly through two channels: the general influence of such Islamic teaching concerning family relations of marriage, divorce, etc., which penetrated through to the people as a whole and succeeded in amending or replacing pre-Islamic customs inconsistent therewith; and the binding legal opinions for the interpretation and application of Islamic law, the judgments awarded, and the arbitrations conducted by local holy men and religious leaders. However, one must not forget that local customs have persisted despite the teaching of the Shari'ah. In certain areas like Hadhramaut, which have been famous as a center of learning in Muslim theology and law, the influence of Shari'ah in the life of the people is greater than that in isolated areas.

Shari'ah Courts in South Arabia applied Islamic law, which was excluded, in the treaties with the British Government, from the "advice" which some local rulers had bound themselves by treaty to accept. The population, as already mentioned, is solidly Muslim and follows the Shafi'i rite with fanatical devotion. Shari'ah law in Southern Arabia is the basic law, as it appears from the following quotation:

> Nominally, at least, the Shari'a is the fundamental law of the state in every particular, and Articles 9 and 10 of Decree No. 5 of 1940 [of the Qu'aytī Sultanate of Shiḥr and Mukallā] read: "The law is Islam is, and is hereby confirmed to be, the fundamental law of our Dominions. In the application of our Decrees Our Courts shall also be guided by and have regard to the general principles of the law of Islam, and to any tribal laws, customs or usages not repugnant to Islam, justice, equity and morality." Qāḍīs' [religious judges] Courts, consisting of a single 'ālim [jurisconsult] are established in a number of centers, and have exclusive jurisdiction over questions of personal status, waqf [religious trust] and matters of contract and tort (huqūq). But decrees have also provided for the establishment of Provincial and District Courts, Courts of the 'Ḥākim al-Sūq', Tribal Courts, and for the Mukallā Commercial Court.6/

Professor Anderson describes the law and administration of justice in the Sultanate of Shiḥr and Mukallā from among the Federation as examples of an advanced system. He proceeds by relating that the Provincial Courts have jurisdiction in all criminal cases except homicide, and may pass sentence up to 12 years' imprisonment or, where authorized, corporal punishment not exceeding 24 lashes. The District Courts exercise

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6/ J.N.D. Anderson, Islamic Law in Africa, pp. 12-13.

jurisdiction over lesser criminal acts for which penalties do not exceed one year's imprisonment. The Ḥākim al-Sūq' is a town magistrate, with petty jurisdiction in cases of vagrancy, breach of the peace, petty larceny, minor municipal offenses, and minor religious offenses. His maximum imposed penalty is not to exceed 14 days' imprisonment. The functioning of these courts conforms to old Muslim precedents, for the enforcement of criminal law in a Muslim state belongs to the comprehensive judicial powers of the sovereign, which are delegated to administrative or police officers rather than to the religious judges. Islamic criminal law generally concerns itself with certain offenses for which punishments are specifically prescribed in the Qur'ān. The conditions for applying these punishments are so stringent that they are rarely imposed. For other violations it is left to the discretion of the Muslim sovereign who issues instructions to be followed.

The Mukallā Commercial Court is another good Muslim practice, since Commercial Courts, composed of a magistrate sitting with assessors drawn from a panel of merchants, have always existed alongside the Shari'ah Court, which is presided over by a Qāḍī [religious judge].

Finally, there are the tribal courts, which include Chief's Courts, consisting of Sultans, Sheikhs and other rulers of towns and villages, and Beduins' Courts, consisting of one or more tribal sheikh well versed in tribal procedural customs, chosen from a panel of tribal judges. The Chiefs' Courts may pass judgments, findings, sentences,

decrees, awards, or orders in conformity with the law of Islam, tribal or local custom, or usage not repugnant to justice, equity or morality. Beduin Courts enjoy a similar freedom, provided they do not transgress justice, equity and morality.

No appeals are allowed from judgments of the Ḥākim al-Sūq'. Appeals from district courts lie to provincial courts, and appeals from the latter to the Supreme Court. Appeals from the Mukallā Commercial Court (if the sum involved exceeds certain limits), and appeals from Qāḍīs' Courts also lie to the Supreme Court. The Supreme Court sits at Mukallā and consists of the Judge and two Qāḍīs appointed by the Ruler. The Supreme Court is supposed to sit in two divisions, the Judge's division and the Qāḍīs' division. The former exercises jurisdiction in all criminal and commercial cases and in other cases not decided by the Shari'ah, and the latter in all civil cases decided by the Shari'ah, including questions of homicide. In tribal cases an appeal lies from a Chiefs' Court to the Provincial Court. In appeals involving Shari'ah cases the Provincial Court will be composed of a Qāḍī sitting with the Provincial Commissioner, who presides over the Provincial Court. Appeals from Beduin Courts lie to the Provincial Beduin Courts of Appeal.

This elaborate system of appeal is existant only on paper because the Qāḍīs have fought any challenge to limit their authority and influence and they have held that everything should be subject to the divine law--in detail in cases of personal status or civil rights, and in spirit in criminal or commercial cases.

Professor Anderson also discussed as an interesting point the development of promulgating a decree which covered many points as follows:

> ...a Decree of 92 articles was issued by the Sultan in 1942 defining the law his courts were to apply in various matters of sale, option, 'Uhda (a local form of mortgage or redeemable sale), surety, release, interdiction, settlement, acknowledgement, partnership, lease, waqf, inheritance, marriage, (including 'idda), maintenance, dissolution of marriage, custody of infants, procedure, testimony, etc. Many of these articles, moreover, either represent a variant view in the Shāfi'ī school, which was thereby preferred to the opinion of Ibn Ḥajar previously regarded as authoritative, or even the view of non-Shāfi'ī jurists.7/

It is obvious from the preceding quotation that Islamic law is the dominant law in the area of personal status, as we see that Shari'ah Courts were functioning with both clearly defined and undefined jurisdiction. The Qāḍīs' Courts are the real courts, with the Qāḍī exercising the most influence on the population.

In discussing the legal system and the courts in the Western Protectorate, Professor Anderson states:

> Outside Lahj, all organized courts are of very recent institution. They have taken the place of the rough tribal justice administered by sheikhs, sultans and manṣabs [rulers] in accordance with ancient law and customs, and the occasional judgements and awards of local syyids [Muslim religious scholar-priests], etc., in accordance with their real or assumed knowledge of the Shari'a. Now,

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7/ Ibid., p. 16.

however Qādīs' courts have been set up, in a considerable number of centers, to administer the Sharī'a in all questions of family law, contract, tort, etc...8/

The position with regard to Sharī'a law in the Colony of Aden in entirely different from that in the Protectorate--or, indeed, in any of the East African Colonies or Protectorates. Its application is limited to the family law of Muslims together with their gifts, waqfs, and right of "pre-emption," and it is administered by the same judge, magistrates, and courts as apply all other matters of civil and criminal law. This system is, of course, a direct heritage of Aden's historical connection with Bombay. Statutory authority for the application of Sharī'a law in these matters is provided by section 41 of the Interpretation and General Clauses Ordinance, 1937, which reads: "Subject to the provisions of any statute...and of any enactment...Courts in the Colony shall exercise their jurisdiction in conformity with usage...", and continues, "nothing in this section shall prevent the continued application of rules or customs of any community in matters of marriage, dower, divorce, woman's property, minority, guardianship, maintenance, legitimacy, succession, inheritance, coparceners and coparcenary property, wills, gifts, religious and charitable endowments, waqfs, debts, pre-emption, partition, and any other matters in any case in which prior to the commencement of this Ordinance such rules or customs would have been applied, unless such rules or customs have been expressly superseded by legislation coming into operation subsequent to the commencement of this Ordinance."

Examples of such subsequent legislation are, however, not wanting. Thus the Majority Ordinance and the Guardians and Wards Ordinance, both of 1937, virtually reproduce the relevant Indian Acts. Similarly, the Oaths Ordinance, 1938, corresponds with parallel legislation in India, Uganda, Zanzibar, etc.,...The Succession Ordinance, 1938,

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8/ Ibid., p. 27.

> which expressly excepts Muslims from those provisions which run counter to Sharī'a law in any major respect, is again a virtual replica of the Indian Succession Act....9/

Professor Anderson further describes the law and its application in the Colony of Aden as follows:

> From conversations with the British Judge, a leading Indian Muslim lawyer, the Qāḍī, and two or three of the most learned local jurists, the following points emerged.
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> Procedure in the courts is, of course, entirely governed by the Evidence Ordinance, 1939, and other enactments. In cases where Islamic law is applicable expert evidence of its substance and application is admissible, presumably on the basis of expert evidence to "custom" rather than "foreign law." In "mixed cases" (i.e., conflict) the law of the defendant is usually applicable, and all schools of Islamic law are regarded as equally authoritative: but such cases are not, apparently, common.
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> From a talk with one of the outstanding Indian lawyers, I gathered that the Indian communities in Aden--Ḥanafīs, Ithnā, 'Asharīs, Bohoras, Memons and Khojas of both the Ismā'īlī and Ithnā 'Asharī factions--normally settle questions of family law within their community by means of their Community Councils, etc., but that there is a tendency among some of the younger members to insist on taking cases to court.
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> The Qāḍī was emphatic that his position was really that of a ma'thūn [registrar]. Besides acting as registrar of marriages and divorces, he sometimes acts as an arbitrator, but with no coercive powers...He also maintained that unless marriages and divorces were properly registered in the Colony the courts would give no judicial relief...

9/ Ibid., pp. 33-34.

> The best informed jurist whom I men in the Colony was the blind preacher Muḥammad bin Sālim al-Byaḥānī. In principle he was himself utterly against being bound by the detailed rules of one particular school, although he so regarded himself, as the law now stood, when cases were referred to him on appeal, and sometimes he had even felt compelled to annul, as contrary to the authoritative ShāfI'I opinion, decisions with which he privately agreed.10/

In summation, the legal systems of the People's Republic of Southern Yemen and of the Arab Republic of Yemen resemble each other closely except for certain laws which previously existed in the Colony of Aden, drawn from Indian legislative enactments. The principles of Islamic law in both countries, including Aden Colony, are widely applied in many areas of law, as it has been shown, especially in the field of family law.

The majority of the Muslim population adheres to the principles of the Shafi'i school of law, and comparative few of these principles have been superseded by legislation. Thus the domestic law as laid down by the teaching of the Shafi'i school is regularly enforced by the courts of both countries, including the State of Aden.

The preservation of the status quo of the law and its application in the People's Republic of Southern Yemen, as it existed prior to

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10/ Ibid., pp. 36-38.

the Republic was accomplished in the Republican Decree No. 5, as follows: 11/

Application of Existing Laws, etc., in Law Courts and Legal Departments.

In exercise of the powers vested in him, the President decrees:--

(1) That the Courts of Law and legal offices and departments shall continue to function normally and that all existing ordinances, regulations and orders shall remain in force in the same manner and to the same extent as they were applicable in any part of the Republic immediately before independence unless such ordinances, regulations and orders are repugnant to the interests of the revolution, its aims and objectives and sovereignty of the Republic and until new laws are enacted.
(2) That the words "Her Majesty the Queen" or "High Commissioner" or "Sultan" or "Deputy High Commissioner" or "Colonial Secretary" appearing in the texts of any legislation, ordinance, regulation or order shall read as "President."
(3) That this decree shall come into force with effect from the independence day on November 30th, 1967.

Dated 1st December, 1967.

Qahtan Mohamed Asha'abi
President

11/ People's Republic of Southern Yemen. Official Gazette, No. 1 (December 7, 1967), p. 5.

Paternity and Filiation Under Islamic Law

All Muslim Arab countries, whether in Asia or Africa, still apply the principles of Islamic law on most personal status matters, especially those closely related to religion, such as inheritance and adoption.

One essential factor in the operation of the principles of inheritance law is the principle of Nasab. This Arabic term, in its legal sense, is generally restricted to the descent of a child from his father, but it is sometimes applied to descent from the mother, and is generally employed in a larger sense to embrace other relationships based on blood, while the Arabic word Tabannī is used for adoption. An adopted son or daughter, of known descent, has no right to inherit from his, or her, adoptive parents and their relatives. The filiation based on adoption is neither recommended nor recognized by Islamic law.[12/] Such son or daughter is, however, entitled to what may be given under a valid deed in gift or will.

Adoption in the sense in which it is understood by other nations today, and as it was practiced among the ancient Greeks, Romans and Arabs, is not recognized by Islamic law. Early in life the prophet Muhammad

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12/ "A child of known parentage cannot be validly acknowledged. Such an acknowledgement does not entail the obligation of paying costs of custody, nor does it create prohibition of marriage, nor on the death of one party does the survivor inherit from the deceased." [A.F.M. Abdur Rahman, Institutes of Mussalman Law, Article 354, p. 200].

appears to have recognized the custom of adoption, at the time when he adopted a son named Zaid. Later, when he cured the idolatrous tribes from the practices to which they were adicted, and insisted on higher ideas of domestic relationship, he explained in fuller terms that adoption similar to what was practiced in the "Days of Ignorance" created no such tie between the adopted and the adopting as resulted from blood relationship.

Islamic law, accordingly, does not recognize the validity of any mode of filiation where the parentage of the person adopted is known to belong to a person other than the adopting father, and an adopted child has no rights in the estate of his or her adoptive parents.

The Qur'ān's prohibition of adoption is stated in verses 4 and 5 of Chapter XXXIII, entitled al-Aḥzab (the Clans), as follows:

4. God has not made
For any man two hearts
In his (one) body: nor has
He made your wives whom
Ye divorce by Ẓihār
Your mothers: nor has He
Made your adopted sons
Your sons. Such is (only)
Your (manner of) speech
By your mouths. But God
Tells (you) the truth, and
He shows the (right) way.

5. Call them by (the names
of) their fathers: that is
Juster in the sight of God.
But if ye know not
Their father's (names, call
Them) your Brothers in faith,
Or your Maulās.

But there is no blame
On you if ye make
A mistake therein:
(what counts is)
The intention of your hearts:
And God is Oft-Returning,
Most Merciful.13/

The interpretation given to the part concerning adoption in the above-quoted Surah (Chapter) is that:

> If a man called another's son "his son", it might create complications with natural and normal relationships if taken too literally. It is pointed out that it is only a façon de parler in men's mouths, and should not be taken literally. The truth is the truth and cannot be altered by men's adopting "sons". "Adoption" in the technical sense is not allowed in Muslim law. Those who have been "wives of your sons proceeding from your loins" are within the Prohibited Degrees of marriage; iv. 23:14/ but this does not apply to "adopted" sons.
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> Freedmen were often called after their master's name as the "son or so and so". When they were slaves, perhaps their fathers' names were lost altogether. It is more correct to speak of them as

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13/ Yusuf ali, Abdullah (trans.), The Holy Qur'an, Vol. II, pp. 1102-1103.

14/ Chapter IV, Verse 23, reads as follows: "Forbidden Unto you are your mothers, and your daughters, and your sisters, and your father's sisters, and your mother's sisters, and brother's daughters and your sister's daughters, and your foster mother, your foster sisters, and your mothers-in-law, and your step daughters who are under your protection (born) of your women unto whom ye have gone in--but if ye have not gone in unto them, then it is no sin for you (to marry their daughters)--and the wives of your sons who (spring) from your own loins. And (it is forbidden unto you) that ye should have two sisters together, except what hath already happened (of that nature) in the past. Lo! Allah is ever Forgiving, Merciful." [Pickthall, Mohammed Marmaduke (trans.), The Meaning of The Glorious Koran, pp. 81-82].

> the Maulā [a freed slave] or so and so. But Maulā in Arabic might also imply a close relationship of friendship: in that case, too, it is better to use the right term instead of the term "son". "Brother" is not objectionable, because "Brotherhood" is used in a wider sense than "fatherhood" and is not likely to be misunderstood.
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> What is aimed at is to destroy the superstition of erecting false relationship to the detriment or loss of true blood relations. It is not intended to penalise an unintentional slip in the matter, and indeed, even if a man deliberately calls another his son or father, who is not his son or father, out of politeness or affection, "God is Oft-Returning, Most Merciful". It is the action of mischievous parties which is chiefly reprehended, if they intend false insinuations. A mere mistake on their part does not matter.[15]

It must be remembered that the Islamic world conceives of the Shari'ah law (Muslim religious law) as having sprung up from four principal roots or sources, along with some minor sources, and all authorities of the legal system base their opinions on them. These sources are listed below according to their strength, priority and weight:

1/ The Qur'ān (which is the word of God);

2/ The traditions or Sunna of the Prophet (which is his behavior and sayings during his lifetime);

3/ Ijmā', or consensus of opinion of scholars; and

4/ Qiyās, or analogy.[16]

15/ Yusuf Ali, Abdullah, op. cit., pp. 1102-1103.

16/ Joseph Schacht, The Origins of Muhammadan Jurisprudence, p. 1.

Discussing the relative weights of the original and secondary authorities, it has been observed that the courts have held themselves bound to accept the inference drawn from the Qur'ān and the traditions in preference to what might appear to the judges a more correct inference. The Qur'ān and the traditions are called al-addillah al-Qat'iyah (absolutely sure arguments), while Ijmā' and Qiyās are called al-addillah al-ijtihadiyyah (arguments obtained by exertion).

The Qur'ān, which is the word of God, is considered the foremost source of Islamic law. Every word of it is considered by every Muslim to be the utterance of the Almighty, communicated in His actual words, by the Angel Gabriel, the Holy Spirit, to the Prophet of Islam.[17/] The Qur'ān is actually the real foundation on which the whole structure of Islam rests; it is the main source of Islamic law, and every Muslim sect accepts its authority in every field of social and individual life, without reservation.

In any discussion of adoption, parentage and legitimation are usually also discussed. In the Islamic, as in other systems of law, parentage involves certain rights and obligations. The relation between a father and his child is referred to as paternity and the same relation between a mother and her child is called maternity.

Parentage under Islamic law is established in one of three ways: by birth during a regular or irregular (but not void) marriage; by acknowledgement (Iqrār), in certain circumstances; and by the testimony of two

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17/ S.G. Vesey-Fitzgerald, Law in the Middle East, Vol. I, p. 87.

trustworthy male witnesses, or by that of one male and two female witnesses. Iqrār in law means the giving of information against oneself for the establishment of a right in favor of another. The peculiarity of Islamic law is that in certain cases where it is doubtful whether a person is the child of another, the acknowledgement of the father confers on the child the status of legitimacy. The status of legitimacy is different from the process of legitimation. Legitimacy, it is argued, is a status which results from certain facts, while legitimation is a proceeding creating a status which did not exist prior to such process. It is, therefore, said that, properly speaking, there is no legitimation under Islamic law. Such acknowledgement under Islamic law is only a declaration of legitimacy and not legitimation. It is further said that no statement made by one man that another proven illegitimate son is his son can make that other legitimate, but if no proof of illegitimacy has been provided, such acknowledgement is substantive evidence that the person acknowledged is the legitimate son of the person making the statement. Acknowledgement does not create paternity, but it is a method of proving it. The real cause of paternity in regard to the woman is birth itself; in regard to the father, it is the marital relations, in accordance with a valid contract of marriage which is regular or irregular, but not void. Legitimation per subsequens matrimonium is not known to Islamic law.

Acknowledgement of paternity under Islamic law takes place when the following conditions are present: where the paternity of

a child is not known or established beyond a doubt; where it is not proved that the claimant is the offspring of illicit intercourse; and where, finally, the circumstances are such that they do not rebut the presumption of paternity, such as the difference in age between the person acknowledging and the person acknowledged. A valid acknowledgement gives rights of inheritance to the child, and once made in not revocable under Islamic law.

While on the subjects of children, paternity and filiation, it should be added that Islamic law provides certain legal protection for abandoned children. An abandoned child is referred to in Arabic as Laqeet (foundling). The legal principles pertinent to this institution have been gathered and bound together in the form of a modern code, and are a result of expounding the work of several outstanding Muslim jurists. The legal articles pertinent to foundlings, worked out by this Muslim authority, include Articles 356-364, as follows:

> Article 356: An abandoned child whether illegitimate or not, deserves the compassion of its fellow creatures, and whosoever finds such a child and leaves it to its fate or, after receiving and sheltering it, subsequently abandons it, fails in his duty.
>
> Article 357: Every foundling is held to be a Muslim even when found by a person who is a non-Muslim, unless it is discovered in a quarter exclusively inhabited by Jews or Christians.
>
> Article 358: Without lawful reasons, no one, not even a judge, is entitled to remove a foundling from the person who finds and shelters its.
>
> Where two persons of different religious persuasion discover a coundling, preference shall be given to the Muslim. If neither are Muslims and if both claim the child and are of a similar condition in life, the judge will decide to whom the child shall be entrusted.

Article 359: Property found on the child is the child's own. The person sheltering the child, if so authorized, may use a portion of such property for its maintenance; any sum he himself pays cannot be recovered without an order from the judge.

Article 360: Any person sheltering a foundling must educate it and have it taught a suitable trade or profession. Such person is justified in making the child accompany him wherever he goes, and in receiving gifts and remunerations made in the child's favour.

Article 361: Where a foundling is acknowledged while alive, a mere declaration is sufficient to establish paternity, even when it is made by a Christian or Jew.

Article 362: Where two persons, neither of whom originally received and sheltered the child, acknowledge paternity in respect of a foundling, failing proof to the contrary, the prior claim will be admitted.

Where the two claims are made simultaneously, the claimant who can indicate some distinguishing mark on the child's body shall have preference, in default of stronger proof by the other party.

Article 363: Where a foundling is acknowledged as her son by a married woman, the maternity can only be established by the husband giving his formal assent to her acknowledgement, or by the woman proving that the child was the issue of her union with the husband. If necessary she can establish the child's identity by the deposition of a midwife.

Where a woman is not married, the declaration of two men, or that of one man and two women, is necessary to establish her claim to the maternity of a foundling.

Article 364: Where the foundling is destitute and acknowledged by nobody, and where the person who discovers the child will not be burdened with its maintenance and education, and on proof that when it was found nothing was known of its parents, the State becomes responsible for its maintenance and education.18/

18/ A.F.M. Abdur Rahman, op. cit., pp. 201-203.

The claim of parentage by the person who takes up the foundling with respect to his foundling, is generally admitted. Regarding the declaration that his foundling is his own child after having already declared it to be a foundling, some say that such declaration is valid, both from analogy and also on the principle of benevolence, because his claim concerns a thing already in his hands, is uncontroverted, and no other person's right is thereby destroyed. The preferred opinion, however, is that his claim is valid only on the principle of benevolence, and not from analogy. In the use of analogy, the taker-up contradicts himself, as he at first declares the child to be a foundling, and then avers that it is his own child. The reason for a more favorable construction is that the contradiction concerns a thing of a concealed nature, since it is possible that this child may have been born of his wife, without his knowledge, and that he afterwards comes to a knowledge of the circumstances.

In conclusion, one can say that there is nothing in Islamic law similar to adoption as practiced in most western societies. It is not only not recognized in a Muslim society, but even if practiced by Muslims it will not carry with it any rights, especially those of inheritance. Acknowledgement of paternity, as discussed, is the nearest approach to adoption under Islamic law, but the two processes of filiation are essentially different. Adoption proceeds upon the fact

that the child to be adopted is the child of another. Acknowledgement proceeds upon the assumption that the child acknowledged is actually the child of the one making the acknowledgement, such acknowledgement merely removing the uncertainty about it.

Conclusion

In conclusion, I have posed eight pertinent questions, with answers, as follows.

1. What kind of legal system prevails in the Arab Republic of Yemen and in the People's Republic of Southern Yemen? In both Republics the legal systems are based on secular, religious, and, in varying degrees, on tribal and customary law.

2. What kind of administration of justice exists in the two countries? It varies from an excellent court of record, like the one previously established by the British in the State of Aden, to the most primitive type of court, presided over by semi-illiterate rulers or local holy men, in the hinterlands of both Republics. In between there are some well-organized, well-staffed religious courts concerned only with the application of religious law.

3. What law is applicable to domestic relations or personal status matters? It has been established in the preceding discussion that the application of the principles of Islamic law is universally accepted in both Republics except what had been modified or superseded by

legislation (such as the Majority Ordinance and the Guardians and Wards Ordinance, both of 1937 of the Aden Colony).

4. Has there been any subsequent legislation in either of the two Republics concerning the institution of adoption? No such legislation has been found, which indicates that adoption in both countries is controlled by the principles of Islamic law.

5. Is adoption as a mode of filiation recognized under Shari'ah law? A detailed discussion of adoption is included in this report which indicates that unless fundamental changes are made to its Qur'ānic sources, adoption under Shari'ah law will remain not recognized.

6. In either of the Republics could any body other than a religious court, such as a government department or a philanthropic or charitable organization, issuesa decree or certificate of adoption or make declaratory statements in this respect? Not to the knowledge of this writer. It has been shown that adoption is prohibited by the Qur'ān, and no court or any other public or private organization would commit the mistake of recognizing it. Furthermore, this is a matter within the competence of religious courts only.

7. Is adoption recognized in any other Muslim country which applies the principles of Islamic law to family law? Briefly, Muslim countries may be divided into three categories, as follows:

a/ those which consider the divine law as the fundamental law and apply it similar to its application during the classical

period of Muslim civilization, such as Sa'udi Arabia, 'Oman and, until 1962, the Arab Republic of Yemen;

b/ those which have codified the principles of Islamic law on personal status matters, with certain reforms, such as: the Jordanian Law of Family Rights of 1951; the Syrian Law of Personal Status of 1953; the Tunisian Code of Personal Status of 1956, with an appendix in 1959; the Moroccan Code of Personal Status of 1958; the Iraqi Law of Personal Status of 1959, with amendment in 1963; and the Pakistani Muslim Family Laws Ordinance of 1961;

c/ those which have adopted Western-type legislation which has no connection with Islamic law, such as The Republic of Turkey, which adopted the Swiss Code in 1928.

In the countries of categories (a) and (b) no recognition of adoption has been found. In category (c), adoption is recognized in the same manner as it is in the country from which the law has been borrowed.

8. Do people in countries in categories (a) and (b), whether relatives or strangers, still take children for bringing up and call the practice adoption? It appears that the practice of taking a child from an orphanage or from his natural parents, with their permission, and giving him to others who prove capable of taking care of him and giving him a better home is accepted. It is, however, a misnomer to call it

adoption for reasons discussed in this report. It is, instead, a charitable attitude, very much encouraged according to the teaching of the Muslim religion.

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